

**Remarks**

Claim 2 has been canceled. Claim 10 has been added. Claims 1 and 3 - 10 remain in the application. Reconsideration of this application and the amendments is requested.

**Objections to the Abstract**

The Abstract has been amended to consist of more than 50 words.

**Objections to the Drawing**

The drawings have been amended to show hidden features by dashed lines, extraneously lines have been canceled and the elastic yams have been designated by reference numeral 35.

The attached drawing shows the amendments in red.

**Objections to the Claims**

The objections to claims 1 - 9 have each been addressed and the claims amended, as suggested by the Examiner.

**Rejections under 35 USC 102**

Claims 1 - 5 stand rejected as anticipated by Yamamoto et al. In Fig. 1, Yamamoto et al teach an absorbent pad suspended by a, "waistband 2," with longitudinal ends connectable together. This structure appears to be a belt, as the patentees state, and belts with connected longitudinal ends are certainly old and well known. In Fig. 3, the ends of the waistband are shown permanently connected to form an endless

waistband.

Yamamoto et al disclose the device to be used by men and women which inherently includes outer clothes worn over the device for modesty and further support in the operative position. It should be clear that the belt does not have the lateral support to remain in place on an active infant that may be crawling about and who does not have additional clothes to protect the device. The only embodiment that has lateral support is a preformed panty.

Further the Yamamoto reference does not disclose an outer layer that is impermeable to liquid but permeable to gas for ventilation, as is now claimed in amended claim 1.

It is well settled that an incidental disclosure of a structure does not anticipate an invention without the inclusion of a like intended function. It is agreed that men and women can place one foot, at a time, through a, respective, leg hole of a garment (though some people might disagree) but the structure of the instant invention allows another person to quickly dress the wearer in spite of the wearer's disposition or the other person's for that matter.

The amended claims recite a diaper with a one piece front and back panel that encircles and covers the wearer from the waistband to the crotch panel which forms the leg openings. This structure gives adequate support to assure a proper fit and to remain in place during normal activities without other clothing to hold it in place. The outer layer of the claimed diaper is impervious to liquid but passes ventilating gases. Also, in new claim 10, the inner pervious layer is recited as being a nonwoven hydrophobic material to wick liquid away from the wearer to prevent diaper rash.

It is noted that Yamamoto et al disclose another embodiment with side panels but the garment is finished with seams at the side panels to close the waistband. There is

no disclosure that the structure of one embodiment may be incorporated into the other.

For these reasons, it is submitted that Yamamoto et al does not anticipate the instant invention.

Claim 1 stands rejected as anticipated by Walker. It is noted that the Walker Abstract states that the device may have a left hip portion and a right hip portion and each has a hook and loop fastener. Since the underwear would be incomplete with only one hip portion, it appears that the Abstract refers to a garment with openings on both sides with each side having a fastener. With regard to the Fig.s 2 and 3, these drawings refer back to Fig. 1, see lines 14-18, page 2. The description of Fig. 1 discloses an underwear garment, evidently for use by adult males or females. The description does state that the garment may be used to support a sanitary napkin and has specific tabs for such function. However, the garment is made from a knitted or woven fabric which indicates the re-usability of an article of clothing rather than a diaper.

The Walker underwear is disclosed as having a tab for connecting an absorbent element however, this pad would be supported by the underwear and not enclosed within the structure, as claimed. Further, the Walker underwear does not have an outer layer that is impermeable to liquid but allows gas to pass.

#### Rejections under 35 USC 103

Claim 9 is a method of use claim that includes all the structure of the article recited in claim 1. The claim is directed to a new use which is not disclosed by any of the references cited. Further, fabricating a diaper with only one closable side seam is also novel.

The undersigned wishes to thank the Examiner for the telephone conferences and

the consideration of reviewing the original claims and the references to provide some guidance in the prosecution of the case.

McHale & Slavin, P. A.  
2855 PGA Blvd.  
Palm Beach Gardens, FL 33410

phone 561 625-6575  
fax 561 625-6572

  
C. Fred Rosenbaum  
Registration No. 27110